



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

May 30, 2013

Office of Counsel

SUBJECT: Freedom of Information Act Request; FA-13-0157, Records related to property located approximately five miles south of the intersection of State Highway 82 and Snowmass Creek Road in Pitkin County, Colorado

Ms. Vicki Ferguson
Region 8, Mailcode: 8-OC
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, Colorado 80202-1129

Dear Ms. Ferguson:

In responding to the enclosed Freedom of Information Act request from Mr. Morse, I located the enclosed records that originated with your agency. I have been informed that you are responsible for making a releasability determination for your agency.

Enclosed are three pages of correspondence relating to the Rocky Mountain Institute. Please review the enclosed records and reply directly to the requester as to releasability for these records. I defer to your judgment on releasability.

I would appreciate a copy of your reply to the requester. Please send it to my attention at the above letterhead address and refer to my tracking number FA-13-0157. For your reference also enclosed is a copy of my final response to the requester. If you have any questions regarding the processing of this request, please contact me directly, by email at Sara.Platt@usace.army.mil or by telephone at (916) 557-7596.

Sincerely,

Sara Platt
Assistant Freedom of Information Act Officer

Enclosures

Copy Furnished (wo/encls):

Mr. Travis Morse Headwaters Partners, LLC 109 South 9th Street, P.O. Box 429 Kremmling, Colorado 80459

Headwaters



LAND • WATER • WILDLIFE

DATE: May 14, 2013

SUBJECT: Freedom of Information Act Request

TO: Phyllis M. Svetich
Freedom of Information Officer
Office of Counsel (CESPK-OC)
US Army Engineer District, Sacramento
1325 J Street, Room 1340
Sacramento, California 95814-2922
Phone: (916)557-7236
Fax: (916) 557-5118
FOIA-SPK@usace.army.mil

FROM: Travis Morse
Headwaters Partners, LLC
109 South 9th Street, P.O. Box 429
Kremmling, Colorado 80459
Phone: (970) 640-6217
Fax: (970) 724-0367
Travis@HWPpartnersLLC.com

Dear Ms. Svetich:

Pursuant to the Freedom of Information Act (FOIA) 5 U.S.C. 552, I would like to request the following federal government records which are under your agency's control:

1. All records related to property located approximately five miles south of the intersection of State Highway 82 and Snowmass Creek Road, in Sections 2, 3, 10, 14 and 15, Township 9 South, Range 84 West, Pitkin County, Colorado.
2. All records associated with identification number SPK 1998-75095.

I am affiliated with the new owner of the subject area and am seeking information for use in the company's business. I have been informed that processing fees for FOIA requests include professional search and review at \$44.00 per hour (billable on the ¼ hour) and reproduction costs at \$0.15 per page for standard copies and \$1.00 each for oversized and colored copies. I am willing to pay fees involved in the processing of this request.

I look forward to receiving the requested documents within twenty (20) working days as required by statute. Please do not hesitate contacting me to discuss any aspect of my request.

Sincerely,
HEADWATERS PARTNERS, LLC

W. Travis Morse
Managing Member



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, SACRAMENTO
CORPS OF ENGINEERS
1325 J STREET
SACRAMENTO, CALIFORNIA 95814-2922

June 10, 2013

Office of Counsel

SUBJECT: Freedom of Information Act Request No. FA-13-0157, Records related to property located approximately five miles south of the intersection of State Highway 82 and Snowmass Creek Road in Pitkin County, Colorado

Mr. Travis Morse
Headwaters Partners, LLC
109 South 9th Street
Kremmling, Colorado 80459

Dear Mr. Morse:

Reference your Freedom of Information Act (FOIA) request received on May 14, 2013. Enclosed please find documents pertaining to the subject property.

Although the majority of the documents located in the files are provided, two e-mail chains containing attorney-client communication are exempt from release pursuant to the protection afforded to them under 5 U.S.C. § 552 (b)(5), generally known as "Exception 5" of FOIA. Specifically, the following documents have been withheld in full:

(1) E-mail chain dated October 24, 2012 thru October 29, 2012 between USACE Sacramento District Office of Counsel and USACE Colorado West Regulatory Branch; and

(2) E-mail chain dated October 18, 2012 thru November 28, 2012 between USACE Sacramento District Office of Counsel and USACE Colorado West Regulatory Branch.

These e-mails are protected from disclosure under the attorney-client and attorney work product privileges as incorporated into Exemption 5. These privileges afford sweeping protection to factual materials as well as opinions generated by the United States Army Corps of Engineers (Corps) legal counsel. (*See e.g., United States v. Weber Aircraft Corp.*, 465 U.S. 792 (1984); *FTC v. Grolier, Inc.*, 103 S. Ct. 2209 (1983))

In addition, the following items are protected from disclosure under the Exemption 5 deliberative process privilege:

(1) E-mail correspondence dated July 20, 2012 between USACE Sacramento District Regulatory Branch and Colorado West Regulatory Branch;

(2) E-mail chain dated August 31, 2000 within Colorado West Regulatory Branch;

(3) Draft Public Notice Number 199875095, dated July 31, 1998;

(4) Draft "Department of the Army Permit Evaluation and Decision Document,"
Application No: 199875095.

The purpose of this privilege is to "prevent injury to the quality of agency decision." NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 151 (1975). The types of information covered by this privilege include "advisory opinion, recommendations, and deliberation comprising part of the process by which governmental decisions and policies are formulated." NLRB v. Sears, Roebuck & Co., 421 at 150. The draft documents and internal e-mails were generated for internal use and analysis by the United States Army Corps of Engineers (Corps) and will be used by USACE Regulatory staff in determining policy as it relates to this project and future projects of a similar nature. The internal emails and draft documents contain advisory opinions and deliberations on the part of Corps employees.

Lastly, names of Department of Defense (DoD) employees contained in the headers of e-mails and other similar lists of names within the records have been redacted pursuant to 5 U.S.C. § 552 (b)(6) of the Freedom of Information Act. In response to the terrorist attacks on the United States in the fall of 2001, DoD revised its policies which implement the Freedom of Information Act. At that time, the decision was made to withhold lists of names of all DoD employees. The court upheld this policy decision stating, "The privacy interest protected by exemption six of the Freedom of Information Act encompasses not only the addresses, but also the names of federal employees." See, Judicial Watch, Inc. v. United States, 84 Fed. Appx. 335 (4th Cir. (2004)).

I trust that you will appreciate the consideration upon which these determinations are based. However, because a portion of your request has been denied, you are advised of your right to appeal the determinations through the South Pacific IDA to the Secretary of the Army (Attn: General Counsel). An appeal must be received within 60 days of the date of this letter. The envelope containing the appeal should bear the notation "Freedom of Information Act Appeal" and should be sent to: US Army Corps of Engineers, Sacramento District, ATTN: CESP-K-OC, 1325 J Street, Room 1440, Sacramento, California 95814-2922.

Per our governing regulations, 32 CFR § 518, I am referring two records originating with the U. S. Fish and Wildlife Service, to that agency for release determination and direct response to you. If you have any questions regarding these documents, please contact the Ms. Antoinette Urioste at P.O. Box 25486 Denver, Colorado 80225. You may expect a direct response from Ms. Urioste regarding these records.

In addition, I am also referring two records originating with the U.S. Environmental Protection Agency, to that agency for release determination and direct response to you. If you have any questions regarding these documents, please contact the Ms. Vicki Ferguson at 1595 Wynkoop Street Denver Colorado 80202. You may expect a direct response from Ms. Ferguson regarding these records.

For the purpose of assessing fees, I have classified you as a category 3 other requester under 32 C.F.R. § 518.85(b)(2)(iii). Category 3 requesters are entitled to two hours of search time and 100 pages of records free of charge. After reduction of the processing costs by these amounts, the charges for providing the requested information is as follows:

Professional Search; 3 1/2 hours @ \$44.00 per hr	\$154.00
Clerical Search; 1/4 hour @ \$20.00 per hr	\$ 5.00
Photocopies; 585 copies @ \$0.15 per page	\$ 87.75
Total	\$246.75

Please remit a check for the above amount within thirty (30) days of receipt of this letter. Your check should be made payable to **F & A O USAED-SACRAMENTO**. Please address the envelope to **OFFICE OF COUNSEL, ATTN: FREEDOM OF INFORMATION ACT OFFICER**.

If you have any questions regarding the provided information, please contact Ms. Phyllis Svetich, Freedom of Information Officer, at the above letterhead address or by telephone at (916) 557-7236.

Sincerely,

A. L. Faustino
District Counsel
Initial Denial Authority

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466

DEC 23 1998

Ref: 8EPR-EP

Colonel Michael J. Walsh
District Engineer
Corps of Engineers, Sacramento District
1325 J Street
Sacramento, California 95814-2922

RE: Public Notice 199875095
Rocky Mountain Institute

Dear Colonel Walsh:

We have reviewed the referenced public notice for the placement of fill material in an unnamed tributary of Capital Creek in conjunction with a wetlands impact mitigation bank project in Pitkin County, Colorado.

The Environmental Protection Agency recommends that the Corps require the applicant to photographically document the before and after condition of the property using established points to monitor the physical and biological changes with the restoration project. This monitoring report should be provided to the bank review team for future reference.

From the information provided in the public notice, it appears that intensive management may be required in the early years of developing this restoration project, including vegetation management and animal grazing management. We believe that early, aggressive management efforts taken to establish vigorous wetland plant communities will result in a more fully functioning wetland in a shorter time period. Once the wetlands are established, it is our hope that they will be largely self sustaining so that maintenance is not required or is minimal.

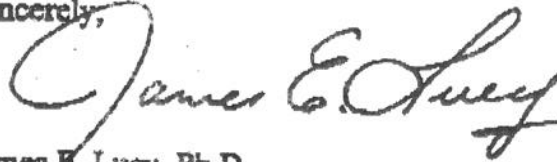
We are also concerned about adverse impacts occurring during construction and believe every effort should be made during construction to minimize sediment releases downstream. Further, existing wetlands areas should be fenced (where practicable) to prevent inadvertent impacts from construction machinery, and rubber wheeled tires or construction pads should be used to minimize impacts to existing wetlands. Provided these concerns are addressed in the 404 permit, we will not object to a permit for the project as proposed.



JUN 04 1992 09:00 ROCKY MOUNTAIN INST. 570 527 3420 P.05

If you have any questions, or concerns with these comments, please contact Sarah Fowler of my staff at 303/312-6192.

Sincerely,

A handwritten signature in cursive script that reads "James E. Lucy". The signature is written in dark ink and is positioned above the printed name and title.

James E. Lucy, Ph.D.
Chief, Planning and Technical Unit
Ecosystem Protection Program

cc: Grady McNure, COE Grand Junction
Susan Moyer, USFWS Grand Junction
Bill Clark, CDOW Grand Junction

AUG 24 2000

Western Colorado Regulatory Office



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 500
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

AUG 18 2000

Ref: EPR-EP

Grady McNure
Chief, Northwestern Colorado Regulatory Office
Corps of Engineers
402 Rood Avenue, Room 142
Grand Junction, CO 81501-2563

RE: Banking Instrument for Rocky Mountain
Institute Wetland Mitigation Bank

Dear Mr. McNure:

We reviewed the referenced document dated 25 May 2000 for the proposed mitigation bank located in the Bohan Valley in Pitkin County, Colorado. The proposed bank site is on a property with approximately 957 acres on an unnamed tributary of Castle Creek. Please find below comments and recommendations provided for your consideration in the review and approval process of the banking instrument.

The **Conditions** section lacked critical information about the location and elevation of the site which we believe is necessary to understand the baseline ecological conditions and ecoregion of the bank site. We believe more information about the valley, including baseline vegetative mapping of the site and proposed post-mitigation plant communities, as well as the existing and future land use in the area would be useful for the MBRT and the public. A more detailed planting plan view would give the MBRT a better visual representation of the habitat being created in the mitigation bank site. Copies of aerial photographs, map locations, and/or pictures should be included in the banking instrument.

Regarding noxious weeds, we recommend that a lower threshold than 10% cover be required, such as 5%, and the weed control management plan should also require control of noxious weeds on the State of Colorado Noxious Weeds list. Specific action items and enforceable conditions for preventing the spread of weeds should be included in the weed management plan, including washing of machinery and mulching methods. This detailed weed management plan should be reviewed and approved by the MBRT prior to the sale of any credits. Also, the map of the service area was also not included in the report we received.




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The banking instrument should also include legal assurances that the waters rights on the property will be held in perpetuity for support of the wetlands mitigation bank. For example, can they be included (or are they included) in the conservation easement on the property as a means to ensure they are preserved? More discussion on this concern should be provided for the MBRT.

If you have any questions concerning these comments or recommendations, please contact Sarah Fowler at 303/312-6192.

Sincerely,


in Richard Claggett, Chief
Wetlands and Watersheds Unit
Ecosystems Protection Program

cc: Terry Ireland, USFWS, Grand Junction
Bill Clark, CDOW, Grand Junction